

CALIFORNIA ACUPUNCTURE BOARD

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Governor

State of California
Department of Consumer Affairs
Arnold Schwarzenegger,



(Approved August 22, 2005)

ACUPUNCTURE BOARD MEETING MINUTES

May 26-27, 2005

Contractors State License Board

Sacramento, California 95827

Full Board May 26, 2005

MEMBERS PRESENT

Shari Asplund, Chair

Joan C. Chang, L.Ac. – Vice Chair

Steven Tan, M.D., L.Ac.

Kenny G. Cherng, L.Ac.

Larry Yee

STAFF PRESENT

Marilyn Nielsen, Executive Officer

LaVonne Powell, Legal Counsel

Janelle Wedge, Administrative Coordinator

Nancy Molinar, Education Coordinator

Kerry Kuepper, Enforcement Coordinator

Michele Marine, Administrative Technician

MEMBERS ABSENT

Justin Tin

GUEST LIST ON FILE

1. Call to Order and Establishment of a Quorum (S.Asplund, Chair)

Chair Shari Asplund called the Acupuncture Board (Board) meeting to order at approximately 9:00 a.m. Roll was taken and a quorum was established.

2. Chair's Report – Shari Asplund

Ms. Asplund stated things have been interesting and changing by the minute. She expressed it is unfortunate it appears the Board will not be getting its other three board appointees and it would be nice to have a full complement of nine board members. Ms. Asplund further stated it is unknown whether any new appointments would be forthcoming in the near future.

3. Executive Officer's Report – Marilyn Nielsen

Ms. Nielsen welcomed new Administrative Technician, Michele Marine, to the Board's Staff. She also greeted new Legal Counsel, LaVonne Powell, who replaced Don Chang earlier this year. Ms. Nielsen stated plaques of appreciation were being made for former Chair Pei Li Zhong-Fong, former Vice-Chair Michael Eng, and former Legal Counsel Don Chang. Ms. Nielsen drew attention to the new 2005 Committee Assignment list just released by the Chair. She also reported she had attended the March 12th Chinese Medicine Day dinner at the Mirawa in San Francisco. She conveyed it was one of the best Medicine Day dinners held and very well attended. She felt the entertainment was great and well received by all present. She also felt the support for the Board and was honored to attend. Ms. Nielsen also informed the Members she has a meeting scheduled for June 2nd with the Medical and Podiatry Board's

Executive Officers(EO) to discuss overlapping jurisdiction. The Dental Board has a new EO that she is still trying to reach to schedule a meeting. Ms. Nielsen also extended an invitation to Legal Counsel, LaVonne Powell to attend the June 2, 2005 meeting.

4. Approval of March 10-11, 2005 Meeting Minutes

LARRY YEE MOVED AND STEVEN TAN SECONDED THE MOTION TO APPROVE THE MARCH 10-11, 2005 MINUTES AS AMENDED. PASSED UNANIMOUSLY.

5. Administrative Business – (Discussion/Action)

a. Board's 2004/2005 Sunset Review

1. CCR Section 1399.403 – Status on Proposed Definition of Primary Health Care and Diagnosis.

2. April 5, 2005 Meeting with Senator Figueroa

Ms. Nielsen explained she would systematically walk the members through the documents and processes that have occurred since the last meeting regarding the Board's sunset review. She reminded the Board they discussed at the March meeting several definitions of Primary Health Care and took action to endorse two versions of the definition and to authorize the EO and Legal Counsel to work with both definitions. The Board submitted five different versions of draft language for the Joint Committee's (Committee) consideration, however; they were all rejected. The Committee's staff had requested the definition be limited to define Primary Health Care Provider as meaning, "only a patient may see an acupuncturist without first having to obtain a referral from a physician or health care professional." Ms. Nielsen and the Chair, Shari Asplund, both became concerned with some of the comments and e-mails from Committee staff. In response to their disquietude, a letter dated March 18, 2005 was submitted to the Committee Chair, Senator Figueroa, addressing the Board's concern regarding the insistence of such a reduced definition, limiting the long standing and established ability of an acupuncturist to function as a primary health care professional and possibly compromise an acupuncturist in the Worker's Compensation System and with insurance reimbursements. In response to this letter, Shari Asplund and Ms. Nielsen met with Senator Figueroa and Committee Staff Consultant, David Link, on April 4, 2005. Ms. Nielsen explained their goal was to help Senator Figueroa understand the awkward position she was putting the Board in to adopt such a reduced version of the definition of primary health care. Other issues such as diagnosis, referrals, and scope of practice were also discussed. Ms. Nielsen felt the meeting was cordial, but it concluded with no understanding of Senator Figueroa's position regarding their discussion or how the Senator would proceed. Ms. Nielsen went on to explain the Committee's public hearing, originally scheduled for April 5, 2005 to discuss the final recommendations to be released prior to that hearing, was cancelled. There was no public hearing and the final recommendation to sunset the Board was released at the Committee's April 12th - vote only meeting.

3. Joint Committee's April 12, 2005 Final Recommendations

Ms. Nielsen briefly reviewed the Committee's Final Recommendations to sunset the Board.

4. Ratification of Board's April 18, 2005 Response to Joint Committee's Final Recommendations

Ms. Nielsen explained, in response to the Committee's Final Recommendations, on April 18, 2005 the Board submitted a letter to Senator Figueroa addressing each of the issues raised by the Committee in their Final Recommendations and discussed the justification as to why the Board should be sunrised. Ms. Nielsen requested the document be officially ratified.

**LARRY YEE MOVED AND JOAN CHANG SECONDED THE MOTION TO RATIFY THE BOARD'S APRIL 18, 2005 RESPONSE TO JOINT COMMITTEE ON BOARDS, COMMISSIONS AND CONSUMER PROTECTION, ADDRESSING THE APRIL 12, 2005 FINAL RECOMMEDATIONS.
PASSED UNANIMOUSLY.**

5. SB 233 (Figueroa) – Board's Sunset Legislation

6. Professions May 11, 2005 Meeting with Senator Figueroa

Ms. Nielsen described the two amended versions of SB233, authored by Senator Figueroa. The first amendment, dated April 18, 2005, was to sunset the Board, effective January 1, 2006, and to move its authority to a bureau under the Department of Consumer Affairs. Ms. Nielsen explained the first amendment did add diagnosis into Business and Professions (B&P) sections 4927 and 4937 as a very simplistic statement of actually allowing and acknowledging that an acupuncturist performs diagnosis prior to providing treatment. SB233 was heard for the first time at the April 25, 2005 Senate Committee on Business, Professions, and Consumer Protection (BP&CP) hearing. Board's Vice-Chair, Joan Chang, accompanied Ms. Nielsen to the hearing where the Board testified in opposition to the bill and requested the Board be sunrised. She reported the profession was represented by four keynote speakers, Michelle Lau and Brian Fennen for Council of Acupuncture and Oriental Medicine Associations (CAOMA), Neal Miller for California Certified Acupuncture Association (CCAA), and Ted Priebe for National Oriental Medical Accreditation Agency (NOMAA). Ms. Nielsen reported there were also approximately 600 licensees, students, and patients who attended the hearing in opposition to SB233 and the sunseting of the Board. Only a small number who attended were able to enter the small hearing room to testify, while the remaining attendees waited outside the hearing room and watched on monitors in the hallways, however the Committee was aware of their presence. Two people testified in support of sunseting the Board, Tom Haines of Pacific College, and Lixin Huang, President of American College of Traditional Chinese Medicine (ACTCM) and the Council of Colleges. SB233 passed out of the BP&CP Committee on a 5-2 vote, with Senator Florez being a "no" vote and Senator Aanestad abstaining. Senator Florez asked extensive questions of the Department of Consumer Affairs representative, Kristine Triepke about the Department's transitional or budgeting plans, but Ms. Triepke was evasive and could not provide an answer. Ms. Nielsen complimented Senator Aanestad, as he had voted yes on SB233 as a member of the Joint Committee, but abstained from voting at the BP&CP hearing after listening to the testimony and reviewing the supporting documents provided to him. She explained the May 3, 2005 amendment added restrictions on the diagnostic authority of the licensee, which apparently was language proposed by the California Medical Association (CMA). SB233 was referred to Senate

Appropriations Committee, but never heard by the Committee. The Board submitted written letters of opposition to the members of the Senate BP&CP and Appropriations Committees. Following the May 3rd amendments Senator Figueroa met with different groups of the profession to discuss a possible compromise of reconstituting the Board by eliminating the current members and the EO, converting the Board to a public majority, and allowing the Department selection discretion of the EO. On May 16, 2005, CAOMA submitted their written rejection of the proposed compromise to Senator Figueroa. SB233 was never heard in Senate Appropriations and was dropped by Senator Figueroa, who relayed that SB233 isn't necessary since B&P code section 4928 defines the Board will become inoperable on July 1, 2006, unless sunrise. Ms. Nielsen explained though the bill is now inactive since it is in a two-year session, it could be resurrected in next year's legislative session after January 1, 2006. She warned it is not a dead bill, it has simply been withdrawn at this point. Ms. Nielsen complimented the profession, their lobbyists, the students, and the public for their persistence in opposing SB233, it proved what a small group of people pulling together could accomplish in defeating SB233 at this point in time. Since the Board still needs to be sunrise, Ms. Nielsen recommended the Governor's office be deluged with letters requesting support in sunrise the Board, and to find a Legislator and a bill to amend sunrise language into, and suggested requesting Senator Perata or some other key legislator to put pressure on Senator Figueroa to allow a sunrise bill to be heard in her committee and give it a fighting chance. Ms. Nielsen sought directive from the Board and invited some of the profession who had attended the meeting for their comments.

Public Comment: Sandy Carey, Lobbyist for CAOMA, indicated she recently met with Senator Perata's staff and they expressed interest in assisting the Board in finding a vehicle that could be used to sunrise or extend the sunset of the Board and apply pressure to the Senator. She said the bill would have to be brought back before Senator Figueroa in Senate BP&CP. Ms. Carey conveyed she would continue to be in touch with Ms. Nielsen to let her know how the process is progressing.

Ms. Asplund remarked things have certainly been interesting and feels the Board's approach has been to do everything they can by continuing to work closely with those that support the continuation of the Board. She directed Ms. Nielsen to persevere in her efforts in continuing the Board in its current structure. Ms. Nielsen responded by warning the members that Senator Figueroa could take the language out of SB233, and quietly amend it into another bill. She vowed to be diligent in following the bill, looking for any amendments to any existing bills, and in searching for a vehicle or an avenue with which to sunrise the Board.

Ms. Asplund commented she found the Medical Association's influence striking in regards to getting the wording about diagnosis in the bill. She feels the California consumers are the losers if the California Medical Association (CMA) is not willing to work with the acupuncture profession, for the good of all patients who could benefit from complementary treatments. Ms. Asplund suggested to Ms. Nielsen that during her meeting with the Medical Board regarding overlapping jurisdiction, she express the Board's concern and willingness to better work together for the good of the patients. Ms. Nielsen related the boards generally work very closely and she has never felt any animosity from the Medical Board

itself. She is not sure what is prompting the CMA, but she does know they are working with the Senator's office. Legal Counsel, LaVonne Powell, pointed out they are not a consumer protection association. Board member, Steven Tan, M.D., L.Ac., concurred it is a win-win situation if the two groups work together. He feels there is probably a good faith concern over limiting the diagnosis term so the wording reflects the true training of an acupuncturist. Dr. Tan gave the example of someone going to an acupuncturist and complaining of chest pain. In his opinion, he feels an acupuncturist is not capable of diagnosing the difference between certain conditions with chest pain symptoms. Dr. Tan said from a consumer protection perspective, it is important to have clarity for the consumer to know what an acupuncturist can diagnose. On the other hand, Dr. Tan expressed the unfairness in using wording that would limit an acupuncturist to such a point they wouldn't be able to practice within their scope of practice. He advocated finding a compromise that protects the acupuncturist but respects the limitations of their training. Legal Counsel, LaVonne Powell, questioned Dr. Tan if the term, "diagnose within the scope of practice of an acupuncturist", had enough clarity. Dr. Tan responded the term is tricky and feels it may be too vague because they would be relying on the good faith of the acupuncturist to know their own limitations and scope of practices. He conveyed great concern as to how the Board should word this, hoping to find clear language that meets a middle ground that will protect the consumer as well as the profession.

Public Comment: Skye Sturgeon, Acupuncture and Integrative Medicine College, (AIMC), Berkeley, commented he met with members of the CMA staff and his impression of their perspective coincides with Dr. Tan's. Mr. Sturgeon suggested the Board meet with the CMA to discuss this. He felt CMA's concern over Leland Yee's bill, AB1113, is when the term, "diagnosis within a scope of practice" is used, there is an essential disconnect between the two concepts. He defined scope of practice as a list of modalities and felt diagnosis didn't necessarily correspond with a list of modalities. Mr. Sturgeon further stated it should be more about competency and training that a person should diagnose within their ability. CMA indicated to Mr. Sturgeon they want to support acupuncture, but need some kind of clarity.

Ms. Nielsen replied that instead of the CMA contacting the Board in any way on the issue, since AB1113 was amended in February with diagnosis, and instead of working with the Board to create an acceptable amendment CMA has been opposing the amendment. She expressed hope the Board and CMA could open that door and felt things had been moving so quickly that sides were drawn prematurely, and she agreed with Dr. Tan's perspective. She concurred the language needs to be very clear due to liability and malpractice. She said the Board does not want an acupuncturist who is not able to refer when they feel it is out of their scope. **Legal Counsel, LaVonne Powell,** suggested it would be helpful if the Board made a motion allowing the Executive Committee to meet with the CMA to craft acceptable language. **Dr. Tan agreed** and felt it is not the intention to put the Acupuncture Board under a non-primary health care. Ms. Nielsen reminded the Board that Joint Committee staff member, David Link, conveyed to her that if the Acupuncture Board was not willing to do a reduced definition of primary health care, then the Joint Committee would consider removing primary health care out of the Board's intent language defined in B&P code section 4928. She feels CMA has valid concerns, but that there are other

ulterior motives behind what is going on. Ms. Nielsen felt these were serious threats and tried to convey that to Senator Figueroa. She requested the Senator have a definition that all healthcare professionals could function under the umbrella of, and not try to target one Board or one entity to reduce or constrict their ability to practice under. It was relayed to the Senator, the Board was not willing to sell the consumer short or the profession down the river to salvage itself.

Public Comment: Neal Miller, representative of Acupuncture and Intergrated Medicine Specialists (AIMS) and CCAA, stated it is common sense that someone should be able to diagnose within their experience and training and this form of medicine is very new to the CMA, who does not really know what it is that an acupuncturist can diagnose. Mr. Miller said the history of the medicine and the terms used in diagnostics are within the language of Traditional Chinese Medicine. The range of maladies someone can treat is very wide and is no different within the western medical community, explaining an orthopedic doctor would not diagnose prostate cancer, but would make a referral. He feels when educating the public, the Board and the profession need to include what range the scope is. Mr. Miller said he feels it is essential the profession be brought into the 21st century and not held back due to the lack of education of other health care providers in knowing what an acupuncturist does.

Board Member, Steven Tan, M.D., L.Ac., responded by reiterating he understands the perspective in which an acupuncturist is coming from, especially regarding becoming a non-primary health care provider. However, he feels it is a tricky semantic question. Dr. Tan feels since the Board is in charge of consumer protection, to leave the word diagnosis wide open is not realistically reflecting the scope of training of an acupuncturist. He expressed it will be a very difficult path to delineate specifically, but he thinks leaving the word diagnosis as it is, is also a very dangerous road to go. He concluded he is not trying to restrict the profession but is really trying to realistically create a safe parameter to practice in. Legal Counsel, LaVonne Powell, added the standard of care is an acupuncturist's competency and training and it is separate from the scope of practice. She said a person can be trained to do something but it can be outside of their scope of practice. Ms. Powell felt the semantics are not impossible and the Board can refer to other practice acts to help with the language.

Public Comment: Neal Miller, representative of AIMS and CCAA, indicated there are no other medical providers that have restrictions or diagnosis being spelled out for them. It is a given one should be diagnosing within one's training and he feels it shouldn't be a regulatory body that makes that decision. He said these things come from malpractice carriers and the level of malpractice going on. Mr. Miller stated to single out the acupuncture profession is discriminative against the profession and a disadvantage to the patients who utilize acupuncture. He stressed to the Board an acupuncturist should be able to treat and diagnose within the fullest extent of their educational training, but to also know what their limitations are. Mr. Miller ended by saying the goal should be allowing patient access and facilitating consumer protection.

Board Member, Larry Yee, suggested educating the public about acupuncture would help educate the medical profession. He feels the public drives the medical

profession and educating the public would earn recognition for the practice. Mr. Yee imparted saying if the public demanded the service then this would drive the profession.

Public comment: Gary Schultz, Southern California University of Health Sciences (SCUHS), indicated there is a clear opportunity for the Board to mandate elevation of the diagnostic abilities of practitioners in the state of California, through continuing education, that practitioners receive additional training and the knowledge and skills in critical thinking areas to operationalize the use of these diagnostic modalities. He further stated then this doesn't result in a de facto change of the scope of practice, but rather it increases public safety and is latitude the Board can operationalize at its discretion.

Public Comment: Michelle Lau, Representative of CAOMA, requested the Board set up a meeting with the profession, schools, and CMA. She indicated CAOMA had spoke to the author of AB1113, Assemblyman Lee, and was told he had contacted CMA to request a meeting and she expected to meet with them soon. Ms. Lau said this is a very important issue because it affects the ability of the acupuncturist and they would like to learn where CMA's problem is coming from. She urged for a meeting so there would be better communication with CMA and suggested the Board demand a reason from CMA regarding their opposition in allowing acupuncturists to use the word diagnose.

Public Comment: Neal Miller, representative of AIMS and CCAA, asked the Board to push for diagnosis using common language within the international classification of diseases. Mr. Miller expressed concern that medical doctors are allowed to practice acupuncture and herbal treatments without any training. He suggested the Board should include all medical professionals that are utilizing forms of medicine that are within the Asian medicine paradigm, whether it is herbs or acupuncture or otherwise, be included in the concern and protection of the consumer. He would like to see a more balanced perspective of all health care deliveries.

Public Comment: Ted Priebe, representative of NOMAA, pointed out Chinese medicine is the oldest primary care practice on the planet that has treated every known disease in the book. He feels the problem is not a matter of just looking at diagnosis, but to understand this would restrict the ability of increasing the knowledge level and expanding the medicine further. Mr. Priebe expressed medical doctors self regulate themselves and diagnose within their ability and refer because they do not want the liability of making a mistake. He feels the acupuncture profession needs to be the same way and thinks there should not be restrictions, but more education so acupuncturists know when to refer properly.

Ms. Nielsen reminded the Board the issue of diagnosis surfaced when the Little Hoover Commission (LHC) reported the need to define the roll of the acupuncturist within the entire arena of health care. The Joint Committee paid very little attention to the LHC's recommendation on this issue until diagnosis was amended into SB233 to mirror the language in AB1113. Dr. Tan commented it opened a Pandora's Box and the Board needed to come up with something that would serve as a good compromise for everyone. Ms. Asplund stated acupuncturists have diagnosed for over twenty-five years without it being in law.

Acupuncture Board Enforcement Coordinator, Kerry Kuepper, interjected the root of the diagnosis issue stemmed from the problems that have surfaced in the last couple of years regarding denials to acupuncturists ordering x-rays and lab tests, because diagnosis was not in their scope.

Public Comment: Skye Sturgeon, AIMC, Berkeley, commented he has a copy of a letter that was sent from the CMA to Assemblyman Leland Yee regarding their position on AB1113 and presented a copy to the staff.

Public Comment: Neal Miller, representative of AIMS and CCAA, pointed out LHC's Vice-Chair owns the largest worker's comp insurance carrier in the country. He related that on the first day of the LHC hearings, they stated they were not going to address any of the issues about scope or diagnosis relating to Workman's Compensation, because it was a conflict of interest. He also felt the truth is acupuncturists have been primary care physicians through 3209.3 in the Labor Code since 1988 and within the Labor Code there are specific rules that specify the treating provider can make a diagnosis. Mr. Miller suggested when going to legislative hearings, instead of going through the B&P Codes, to use the Labor Codes, even though he knows labor codes deal with mostly neuro-muscular skeletal problems. He wanted to state for the record this was a shortcoming of the LHC and it should be part of the Board's discussion and role to identify what the perimeters are that an acupuncturist does.

Public Comment: Ted Priebe, representative of NOMAA, in response to Neal's earlier statement that the Labor Code deals only with treating neuro-muscular skeletal issues, indicated the Labor Code was not restricted to treating only neuro-muscular skeletal issues. He explained anything, in relation to whatever type of injury an acupuncturist treats with their medicine, is acceptable through Workman's Compensation, the acupuncturist just needs to know how to write those types of reports.

b. Proposed Regulatory Amendments to Title 16, California Code of Regulations

1. Amend Sections 1399.450, 1399.451 and 1399.454 – single-use needles.

Ms. Nielsen explained per the recommendations of the Joint Committee and by the Board's actions at the last meeting, emergency regulations were filed to require single-use needles only. The original request was filed on April 6, 2005 but after working with the Board's Legal Counsel, the emergency regulation documents were amended and the final packet, with a new request cover sheet dated May 11, 2005, commenced circulating for official approval through the Department. DCA Legal Division has reviewed the emergency regulations, they have been signed off by the Budget Department, and is currently in the Legislative Regulatory Division pending a decision, which should be finalized by the end of the week. If approved, it will be filed with the Office of Administrative Law and they would have ten working days to review and approve the package. She included the Board would be conducting the regulatory hearing on the emergency regulations at the August Board Meeting.

2. Amend Sections 1399.480, 1399.481, 1399.483, 1399.484, 1399.485, 1399.486, 1399.487, 1399.488, 1399.489, 1399.489.1 – continuing education.

3. Amend Section 1399.465 – citation fines.

Ms. Neilsen explained the regulatory packages for continuing education and citation fines will be filed in June and the Board will also conduct the regulatory hearing on these at the August Board Meeting.

6. Enforcement Orientation/Business - (Discussion/Action)

a. Administrative Procedure Act – LaVonne Powell, Board Legal Counsel

Legal Counsel, LaVonne Powell, described the Administrative Procedure Act to the Board Members and how it applies to them when dealing with enforcement cases and the regulatory process.

b. Board's Enforcement Process/Procedures – Kerry Kuepper, Enforcement Coordinator

Acupuncture Board's Enforcement Coordinator, Kerry Kuepper, explained the Board's complaint and enforcement process and the varied actions that can be taken. She stressed complaints are not subject to public disclosure and a person is innocent until proven guilty.

c. Attorney General's Office – Vivien Hara, Supervising Deputy Attorney General

Supervising Deputy Attorney General, Vivien Hara, was unable to attend the Board Meeting. Legal Counsel, LaVonne Powell, discussed the duties of the Attorney General's office.

d. Fiscal Year 2004/2005 Enforcement Case Report

Ms. Nielsen listed the following enforcement complaints filed since July 1, 2004: 122 new complaints filed, 74 cases being reviewed in-house, 21 formal investigations pending with the Division of Investigation, and 33 opened disciplinary cases. She noted the highest percentage of complaints come from unprofessional conduct and criminal charges and convictions.

e. Federation of Acupuncture & Oriental Medicine Regulatory Agencies (FAOMRA)

Ms. Nielsen described FAOMRA as an organization that represents agencies that license and regulate the practice of Oriental medicine. She further stated California was one of the founding members and has held a position on the Board of Directors since its inception. She also stated that FAOMRA submitted letters to the legislature endorsing the sunrise of the Board. Ms. Nielsen requested the authority to renew the Board's annual membership.

STEVEN TAN MOVED AND JOAN CHANG SECONDED THE MOTION TO AUTHORIZE THE EXECUTIVE OFFICER TO RENEW CALIFORNIA ACUPUNCTURE BOARD'S YEARLY MEMBERSHIP WITH THE FEDERATION OF ACUPUNCTURE AND ORIENTAL MEDICINE REGULATORY AGENCIES, (FAOMRA), DUES COST = \$1,000.00 YEARLY. PASSED UNANIMOUSLY.

7. 2005 Legislative Bills - (Discussion/Action)

a. AB 1113 (Yee) - Diagnosis

Ms. Nielsen reminded members they took action to support AB1113(Yee), adding diagnosis to Business and Professions Code 4937, at the last Board meeting. This action was based on knowing AB1113 was targeted to be amended, giving the Board an opportunity to evaluate the amended language upon completion. AB1113, amended on

April 14, 2005, progressed successfully through the Assembly, and is being heard in the Senate. Ms. Nielsen asked if the Board would like to change their position.

Public Comment: Neal Miller, representative of AIMS and CCAA, asked if the Board was clear on what diagnosis within his/her scope of practice meant, whether it meant an Asian medicine diagnosis or if it is an international classification of diagnosis.

Public Comment: Michelle Lau, Representative of CAOMA, stated in her opinion diagnosis meant diagnosis, that there is no distinction between Asian diagnosis and international diagnosis. She mentioned when she met with Assemblyman Leland Yee, she asked him about diagnosis and they concurred it was based on training and an acupuncturist diagnosed within their education.

Public Comment: Ted Priebe, representative of NOMAA, imparted diagnosis does not belong to anybody on the planet, because there is only one human physiology known, and only one real body of pathology. He also stated there is no western diagnosis or eastern diagnosis, it is just a matter of semantics. He gave the example of talking about a disease, saying it doesn't matter what you call it, it is still a disease. He stated diagnosis is universally used throughout the world because it means the same thing to everybody. Mr. Priebe concluded there is Asian and western diagnosis, but the only difference is in the language used to describe diagnosis.

Public Comment: Brian Fennen, L.Ac., CAOMA, indicated he was also present at the meeting with Assemblyman Leland Yee. He said Assemblyman Lee asked if acupuncturists followed a codebook. Mr. Fennen replied they use the International Classification of Diseases book and Assemblyman Yee is using this as a parameter when defining diagnosis. Assemblyman Yee stated specifically he did not want to expand or restrict the scope of practice, he just wanted to put into statute what the correct practice is. Mr. Fennen concluded by saying they discussed many variations, but this wording was the most simple, and somewhat open for interpretation, and it would include the term diagnosis into the statute so people would stop being discriminated against when billing third party insurance companies.

Public Comment: Neal Miller, representative of AIMS and CCAA, stated he is not clear if the Board's position is the same as his and recommended Dr. Tan testify at hearings so he can explain the Board's definition of diagnosis to the Legislators to set the record straight. Mr. Miller reiterated he wants the Board's opinion on what diagnosis means to them specifically, since they have taken a support position on AB1113.

Ms. Asplund said the Board agrees with Assemblyman Yee's definition and thanked Mr. Miller saying they would take his recommendation into consideration and stated the Board would continue to support AB1113.

b. AB 1114 (Yee) – Continuing Education

Ms. Nielsen described AB1114(Yee) would increase the continuing education hours from 30 hours every two years to 50 hours. She explained the bill has also successfully progressed through the Assembly and has been moved to the Senate. She reminded the members, they took a watch position at the last meeting because it was indicated the general profession was not surveyed regarding the proposed increases and CAOMA had not taken a formal position. Ms. Nielsen recommended the Board support the bill.

Public Comment: Brian Fennen, L.Ac., CAOMA, and Gary Schultz, SCUHS, agreed to support the bill and asked the Board to support it as well.

LARRY YEE MOVED AND JOAN CHANG SECONDED THE MOTION TO SUPPORT AB1114 INCREASING THE CONTINUING EDUCATION HOURS AN ACUPUNCTURIST MUST COMPLETE FROM 30 TO 50 EVERY TWO YEARS.

AYES: SHARI ASPLUND, JOAN CHANG, STEVEN TAN, AND LARRY YEE

**NOES: KENNY CHERNG (PREFERRED RETAINING WATCH POSITION FROM MARCH 2005 MEETING)
MOTION PASSES**

c. AB 1115 (Yee) - Acupuncture Assistants

Ms. Nielsen stated AB1115(Yee), authorizing the use of acupuncture assistants, was amended on April 13, 2005. The bill defines that an acupuncture assistant would not perform any patient care, and strictly perform basic administrative, clerical, and supportive services only. Ms. Asplund indicated the term “supportive services” seemed very vague and may allow for future training of certain procedures. She expressed this term is in conflict with itself, if the intent is for administrative purposes only. Legal Counsel, LaVonne Powell, also expressed concerns with the language, “supportive services”, as it is too vague and open to interpretation. Ms. Nielsen told the Board they supported the bill at the last meeting and wanted to evaluate the final language once amended. Ms. Asplund reminded that the Board’s intent was to assemble a task force to review and establish the educational and practice requirements of an assistant. Members expressed concern over the wording used in the bill. Ms. Nielsen indicated she would meet with Assemblyman Yee to relate the Board’s general support of the bill and to discuss the concerns of the Board.

Public Comment: Brian Fennen, L.Ac., CAOMA, Ted Priebe, representative of NOMAA, Michelle Lau, Representative of CAOMA, , and Gary Schultz, SCUHS, all agreed with the Board’s decision to support the concept of acupuncture assistants and also supported amendments. They suggested using other professions with assistants as models to help clarify the wording.

Neal Miller, representative of AIMS and CCAA, and Skye Sturgeon, AIMC, Berkeley recommended that the Board oppose AB1115 unless amended.

STEVEN TAN MOVED AND LARRY YEE SECONDED THE MOTION TO TAKE A SUPPORT IN CONCEPT POSITION ON AB1115 BUT TO RETAIN A WATCH POSITION AND DIRECTED THE EXECUTIVE OFFICER TO CONTACT ASSEMBLYMAN YEE TO IDENTIFY SPECIFICATIONS AND INTENT, AND THE BOARD’S RESPONSIBILITY TO ESTABLISH STANDARDS FOR SUPPORTIVE SERVICES.

VOTE: UNANIMOUS

d. AB 1116 (Yee) - Postgraduate Residency

Ms. Nielsen stated that AB1116(Yee) dealt with postgraduate residency and has been amended two times since the Board’s last review. The Board took a watch position and wanted to evaluate the final language after being amended.

Public Comment: Skye Sturgeon, AIMC, Berkeley, indicated that he spoke as a representative of the Association of California Oriental Medicine Colleges and relayed their position to oppose AB1116. The Association submitted a letter of opposition to the Legislative Committees and to the author of the bill, Assemblyman Yee.

Public comment: Gary Schultz, SCUHS, commented that SCUHS supports this bill and indicated they are doing this in their chiropractic program, which is working very well. SCUHS would be willing to share any information with the other colleges.

Public Comment: Ted Priebe, representative of NOMAA, indicated this bill is similar to the NOMAA's program, which assessed the same issues, but agrees with Mr. Shultz that it can be done.

Public Comment: Michelle Lau, Representative of CAOMA, supports the bill because it protects the consumer and benefits the student.

Public Comment: Tom Haines, representative of Pacific College, stated if the bill is modified and written as a voluntary program they would support it.

Legal Counsel, LaVonne Powell, suggested the language regarding the supervisor's requirements needed more clarification because the standards for the supervisors are vague. She also indicated there would be a tremendous impact on current Board staff and new staff would be needed to handle program requirements.

Public Comment: Neal Miller, representative of AIMS and CCAA, feels the idea is great but opposes the bill because it is not well thought out.

Ms. Asplund directed Ms. Nielsen to include this in her meeting with Assemblyman Yee.

Public comment: Benjamin Deirauf, representative of AIMC, suggested the Board request Assemblyman Yee to make this a two-year bill and to create a task force to work out the details.

**SHARI ASPLUND MOVED AND KENNY CHERNG SECONDED THE
MOTION TO RETAIN A WATCH POSITION ON AB1116 (YEE)
IMPLEMENTING POSTGRADUATE RESIDENCY REQUIREMENT
AND DIRECTED THE EXECUTIVE OFFICER TO DISCUSS THE
BOARD'S CONCERNS WITH ASSEMBLYMAN YEE.
AYES: SHARI ASPLUND, JOAN CHANG, KENNY CHERNG, AND
STEVEN TAN.
NOES: LARRY YEE
MOTION PASSED**

e. AB 1117 (Yee) – Asian Medicine

Ms. Nielsen explained AB1117(Yee) amends B&P Code Sections 2075, 3642, 4926, 4935, 4937, and 4939 changing the term "Oriental Medicine" to "Asian Medicine." She recommended to support.

**LARRY YEE MOVED AND JOAN CHANG MOVED TO TAKE A
SUPPORT POSITION ON AB1117 AMENDING THE TERM “ASIAN” IN
LIEU OF “ORIENTAL” INTO CURRENT LAW.**

VOTE: UNANIMOUS

f. AB 871 (Keene) – Workers’ Compensation

Brian Fennen, L.Ac., CAOMA, indicated CAOMA is opposing this bill because it deletes the existing allowance for an employee, prior to an injury, to pre-designate a physician, chiropractor, or acupuncturist.

g. AB 1549 (Koretz) – Workers’ Compensation

Brian Fennen, L.Ac., CAOMA indicated this bill is on hold for two years and allows acupuncturists to do a disability evaluation.

Neal Miller, representative of AIMS and CCAA, stated AIMS is the sponsor of AB1549 and the bill would end discrimination of Worker’s Compensation and allow acupuncturists to fully manage their patient relating to disability evaluations. It is not supported at this time and was postponed until it could be better evaluated. CMA and Chamber of Commerce oppose.

h. AB 681 (Vargas) – Workers’ Compensation.

Brian Fennen, L.Ac., CAOMA explained this bill deals with extending the Worker’s Compensation fee schedule to 2008 at which time the Administrative Director can establish a new fee schedule and try not to get it lowered or altered.

i. SB 515 (Campbell) – Acupuncture – Spot Bill

Ms. Nielsen drew the Board’s attention to SB515 because Senator Campbell had indicated to her they have no intention to do anything with this bill and she suggested this bill would be a good vehicle for a Senator to amend language into to sunrise the Board.

j. SB 226 (Negrete McLeod) - Joint Committee

Debra Mattos indicated this bill was dropped.

k. SB 412 (Figueroa) – Massage Therapy

Ms. Nielsen indicated she is concerned with SB412(Figueroa) because the Joint Committee has stated they do not believe an acupuncturist has the right to refer, however; this bill authorizes a massage therapist to refer to other health care practitioners. She questioned what kind of training a massage therapist has that would allow them to refer to any kind of health care practitioner.

8. Public Comment Period:

Neal Miller, representative of AIMS and CCAA, stated that he is looking forward to working with this Board and advised the new members to look over the past few years of Acupuncture Board’s dealings so the institutional history is not lost. He also encouraged new members to look at herbs and drug-herb interactions and to take a more aggressive pro-active role to regulate.

Ms. Nielsen indicated there is a strategic session scheduled for October 2005 and the Board will be looking at short and long term goals and issues to support.

9. CLOSED SESSION: Pursuant to Government Code Section 11126 (c) (1) and (c)(3) to discuss/take action on examination administration and disciplinary actions.

10. Adjournment – The Acupuncture Board meeting adjourned at approximately 4:30 P.M.

<p style="text-align: center;">Full Board Friday, May 27, 2005</p>
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1. Call to Order and Establishment of a Quorum (S.Asplund, Chair)

Chair, Shari Asplund, called the Acupuncture Board meeting to order at approximately 9:00 a.m. Roll was taken and a quorum was established.

2. Administrative Business – (Discussion/Action)

a. Fiscal Year 2004/2005 Budget Report

Ms. Nielsen reported the current fiscal year 2004-2005 ends June 30th and recommended the members submit all outstanding claims immediately. Ms. Nielsen reviewed the budget expenditure report ending March 31, 2005 and concluded there will be an approximate 2% surplus at year's end.

b. 2005/2006 Budget Change Proposal - Office Assistant (Chinese Translator)

Ms. Nielsen updated members regarding the status of adding an office assistant to the Board's staff saying once the Governor signs the budget, staff would begin advertising for the position.

c. Applicant Tracking System (ATS) Transition Plan

Ms. Nielsen explained to members the Department has moved up the Board's transition date to the new ATS program for July 2005. The department's original projected date was 2006 but the Board has committed the staff training time and funding necessary, thus enabling the project to be moved up. Ms. Wedge is the lead on the project and staff training has commenced and should be completed by end of summer.

3. Examination Business – (Discussion/Action)

a. August 17, 2005 Licensing Examination

Ms. Nielsen reported there are 440 new applicants and 360 re-takers who have applied for the August 17, 2005 licensing exam, with an expectation of between 650-800 candidates to sit for the exam. Starting with the August 2005 exam, students had to complete their required education 30 days prior to the exam, which provides for exact numbers to be known for printing of the exams and to make seating arrangements. Ms. Nielsen announced the 2006 licensing exams would be held on Tuesday, March 7, 2006 and Tuesday, August 29, 2006. Ms. Nielsen was directed to add setting limits on how many times an applicant could re-take the exam as a discussion item on the next agenda.

6. Enforcement Orientation/Business – (Discussion/Action)

a. DCA Division of Investigation – Bill Holland, Northern Area Commander, and Ken Eldridge, Senior Investigator

Bob Malloy replaced Bill Holland whom was unable to attend the meeting. Mr. Malloy and Mr. Eldridge spoke to the members, informing them what the duties of the DCA Division of Investigation are and how they investigate accusations relating to licensees and present reliable information and final investigative reports to the Board.

b. Use of Assistants

The Board directed Ms. Nielsen to schedule an enforcement committee meeting for Friday, June 24, 2005 to evaluate the use of assistants.

c. Establish Blue Ribbon Panel to Render Opinion on Misc. Practice Issues

- 1. Gynecological/OB GYN Issues**
- 2. Homotoxicology**
- 3. Manual Therapy Techniques**
- 4. TCM Treatment of Anti-Aging and Dermatological Services**
- 5. Homeopathic Medicine**

STEVEN TAN MOVED AND KENNY CHERNG SECONDED THE MOTION TO AUTHORIZE ESTABLISHING SMALL 1-3 MEMBER BLUE RIBBON PANELS TO ASSIST THE BOARD'S LEGAL COUNSEL TO REVIEW AND EVALUATE SCOPE OF PRACTICE ISSUES PERTAINING TO REQUESTS FOR PENDING LEGAL OPINIONS.

VOTE: UNANIMOUS

7. Education Business – (Discussion/Action)

a. Status on Schools Implementation of 3,000-Hour Curriculum Requirements

Ms. Molinar explained all Board approved acupuncture schools had submitted the required Curriculum Requirement Form outlining their compliance with implementation of the 3,000-hour curriculum requirements, with the exception of Oregon College of Oriental Medicine. She indicated all forms would be reviewed and the final results will be presented at the August Board meeting.

b. Board's School Approval Process

Ms. Nielsen reminded the members the Board wanted to wait to discuss the issue of the school approval process pending the outcome of the Joint Committee's Final Findings and Recommendations. After brief discussion the Board directed this item will be further discussed at the Board's October 2005 strategic planning session.

c. Stanton University School Site Visit

School Site Visit Team Member, Nancy Molinar, presented her findings from the May 4-6, 2005 Stanton University site visit. She stated due to numerous issues and concerns, she recommends the Board not take action at this time but to revisit the school when changes have been made. She conveyed some of the issues needed to be corrected were: interns in clinic training must "cease and desist" performing acupuncture on patients or any other direct patient treatment, interns training in the clinic must be integrated with herbal training and formula preparation, administration and faculty must cease using the inappropriate and misleading use of the title "doctor", unless they possess a license or certificate which authorizes such and the Library must offer core curriculum textbooks in the field of acupuncture and Oriental medicine. She further stated the financial stability of Stanton is questionable and the administration is weak. Marcia Trott, Bureau of Private Postsecondary and Vocational Education (BPPVE), who was a site visit team member to Stanton, also reviewed BPPVE's findings and addressed its concerns.

SHARI ASPLUND MOVED AND STEVEN TAN SECONDED THE MOTION TO TAKE NO ACTION FOR APPROVAL AT THIS TIME

AND DIRECTED STAFF TO REVISIT STANTON IN ONE YEAR TO ALLOW STANTON TIME TO IMPLEMENT CHANGES AND ELEVATE THE SCHOOL TO THE CALIFORNIA ACUPUNCTURE BOARD'S REQUIREMENTS.
VOTE: UNANIMOUS

d. China International Medical University, Los Angeles, CA – Attorney General's Proceedings to Withdraw Board Approval

CIMU addressed the Board regarding their status as a Board approved school. They communicated efforts to meet the Board's requirements and their desire to be re-evaluated in 6 – 9 months. The Executive Officer was directed to schedule a revisit of CIMU in the first part of 2006 to assess whether the school has implemented program, administrative, and financial changes identified as concerns of the Board.

e. Pending School Site Visits

The Board's EO indicated that licensed Board members have been assigned to upcoming school site visits, therefore no member assignments need to be made at this time.

8. Public Comment Period

No public comment was made

9. Adjournment

The Acupuncture Board meeting adjourned at approximately 1:35 P.M.